

Claimant, a nurse's aide for respondent, worked with patients suffering from contagious shingles. Shingles stems from the same virus which causes chicken pox.

Claimant's first known exposure appeared to occur on approximately March 20, 1993 with a second known exposure period alleged on April 17 or 18, 1993. Claimant became symptomatic with chicken pox on April 20, 1993. It is claimant's contention that these exposures to shingles lead to his contracting of chicken pox which resulted in significant scarring on his face. Claimant is requesting medical treatment including plastic surgery to alleviate the results of the scarring from the chicken pox.

K.S.A. 44-501 requires that personal injury by accident arising out of and in the course of employment be caused to an employee before benefits can be allowed under the Workers Compensation Act. K.S.A. 44-5a01 requires that where an employer or employee are subject to the provisions of the Workers Compensation Act and disablement or death results from an occupational disease as defined in the statute, said occupational disease shall be treated as the happening of an injury by accident entitling claimant to benefits under the Workers Compensation Act.

K.S.A. 44-5a01(b) defines occupational disease as follows:

“‘Occupational disease’ shall mean only a disease arising out of and in the course of the employment resulting from the nature of the employment in which the employee was engaged under such employer, and which was actually contracted while so engaged. ‘Nature of the employment’ shall mean, for purposes of this section, that to the occupation, trade or employment in which the employee was engaged, there is attached a particular and peculiar hazard of such disease which distinguishes the employment from other occupations and employments, and which creates a hazard of such disease which is in excess of the hazard of such disease in general. The disease must appear to have had its origin in a special risk of such disease connected with the particular type of employment and to have resulted from that source as a reasonable consequence of the risk.”

In this instance claimant, as a result of his specific job duties, came into contact with symptomatic patients suffering from shingles. The evidence in the record establishes that the virus causing shingles is the same virus which causes chicken pox. The Appeals Board finds that the nature of claimant's employment did involve a particular and peculiar hazard the general public would not normally be exposed to or have personal contact with patients with shingles as a part of their employment. In so finding, the Appeals Board holds claimant did contract an occupational disease stemming from a special risk of such disease connected with claimant's employment and is therefore entitled to compensation.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated June 1, 1995, shall be and is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

I respectfully dissent from the opinion of the majority in the above matter. K.S.A. 44-5a01(b) states:

"Ordinary diseases of life and conditions to which the general public is or may be exposed to outside of the particular employment, and hazards of diseases and conditions attending employment in general, shall not be compensable as occupational diseases"

In this instance claimant suffers from chicken pox. How one could suffer from a more ordinary disease of life is hard to imagine. It should also be noted the medical documentation provided in the record indicates the incubation period for chicken pox is from ten (10) to twenty-one (21) days. Claimant was exposed on approximately March 20, 1993 and came down with symptoms on approximately April 20, 1993 a period of more than twenty-one (21) days.

Claimant was later exposed to a noninfectious case of shingles on April 17 or 18, 1993, three (3) days before claimant became symptomatic, again, not falling within the ten (10) to twenty-one (21) day window required for chicken pox incubation. This board member believes claimant suffered from chicken pox, a very ordinary disease of life to which millions and millions of people are exposed through the normal course of their lives each year. It would also seem the only exposure periods during claimant's employment would not fall within the chicken pox incubation period and thus, it would be impossible for claimant to have contracted chicken pox as a result of exposure arising out of and in the course of his employment. As it is claimant's burden under K.S.A. 44-501 and K.S.A. 44-508(g) to prove his entitlement to an award of compensation by proving the various conditions on which claimant's right depends by a preponderance of the credible evidence, it is this board member's position that claimant has failed in this burden of proof and benefits in this case should be denied.

BOARD MEMBER

c: Timothy E. Power, Overland Park, Kansas

Douglas C. Hobbs, Wichita, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director